IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.MC.No. 3655 of 2007()

SC.415/2006 of SPL. COURT (NDPS ACT CASES), THODUPUZHA

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PETITIONER: PETITIONER/ACCUSED:

ALEYKUTTY, W/O.CHACKO, VALLAVASSERIL
KUDIYIL HOUSE, PARATHODU, UDUMBANCHOLA TALUK,
IDUKKI.
]

BY ADV. SRI.SOORAJ T.ELENJICKAL

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA THROUGH EXCISE INSPECTOR
UDUMBANCHOLA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3655 of 2007

Dated this the 6th day of December, 2007

O R D E R

Petitioner faces indictment in a prosecution under the Kerala Abkari Act. The matter has reached the stage of trial. A defence witness was summoned. The witness summoned was the Secretary of the Panchayat. He was directed to appear along with a register. He brought the register and he was present in court. The defence counsel was not available to examine that witness. The witness was sent back and the evidence was closed. The petitioner through her counsel made an application with a prayer that the witness may be recalled. The learned Magistrate, by the impugned order, dismissed the said application under Section 311 Cr.P.C.

2. The learned counsel for the petitioner submits that the learned Sessions Judge has not alertly applied his mind to the relevant circumstances. The petitioner had wanted the register relating to Ward No.8 to be produced. The witness unfortunately had come to the court with the register relating to Ward No.7. Even if the counsel were present, it would not have in any way altered the situation. The court would have been compelled to

send the witness back and ask him to come again with the register relating to Ward No.8. In these circumstances, the rejection of the prayer to recall the witness to come with the correct document is not at all justified.

3. I am not entering into that controversy at all. The petitioner wants the Secretary of the Panchayat to come with the property tax register of Ward No.8 for the relevant period. It is not necessary that the Secretary must be directed to appear personally to produce that register. Certified copy of the document can be applied, obtained and produced. If after production of such document it becomes necessary to call that witness, for any purpose, such renewed application can be made by the petitioner. I find no reason to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order.

4. With the above observations, this Crl.M.C is dismissed.

5. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-